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LADAS & PARRY  
26 WEST 61ST STREET  
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**OFFICE OF PETITIONS  
ON PETITION**

In re Application of  
Laurent De Volder  
Application No. 10/018,302  
Filed: November 8, 2002  
Attorney Docket No. U-013688-5

This is a decision on the petition filed August 11, 2006, under 37 CFR 1.181, to Invoke Supervisory Authority and to withdraw the holding of abandonment of the above-identified application.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a)" or (b). This is not a final agency decision.

The above-referenced application was held abandoned on August 14, 2003 for failure to file corrected drawings in response to the Notice of Allowability mailed May 13, 2003. Accordingly, a Notice of Abandonment was mailed October 10, 2003.

In a Petition to Withdraw the Holding of Abandonment filed October 20, 2003, petitioners argued that the replacement drawings had been timely filed on August 13, 2003. Included with the petition was a copy of the drawings, a postcard receipt date stamped August 15, 2003 and a "Letter Accompanying Amendment After Allowance" which indicated that the drawings were being amended. While the documents included had a certificate of mail, the certificate of mail was not signed and neither was the response. Furthermore, the postcard receipt which is date stamped August 15, 2003, was not properly itemized to indicate that the drawings were included.

The petition was dismissed in a decision mailed November 29, 2004 by the Office of Publications and renewed petitions were filed December 13, 2004, June 7, 2005, and August 24, 2005 each of which were dismissed in decisions mailed May 31, 2005, August 18, 2005 and September 15, 2005, respectively by the Office of Publications.

Upon review of the petitions filed and the decisions mailed, this office finds that the petitions were properly dismissed by the Office of Publications. As the petitions consistently argued that the response to the Notice of Allowability was timely filed, the proof is not substantiated. The postcard receipt does show that something was filed and received in the USPTO on December 15, 2003 but it can't be determined that what was filed was the drawings. Since the papers filed and received after the due date did not have a signed certificate of mail pursuant to 37 CFR 1.8 the response was not timely filed.

In view thereof and since a proper response was not timely filed, the holding of abandonment will not be withdrawn and the notice of abandonment will not be vacated.

### ALTERNATIVE VENUES

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(a)<sup>1</sup> or 37 CFR 1.137(b),<sup>2</sup> which now provides that where the delay in reply was unintentional, a

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<sup>1</sup> A grantable petition under 37 CFR 1.137(a) must be accompanied by:

(1) the required reply, unless previously filed; In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(l);

(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

<sup>2</sup> Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:      Mail Stop Petition  
                 Commissioner for Patents  
                 P.O. Box 1450  
                 Alexandria, VA 22313-1450

By FAX:      (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is fluid and cursive, with the first name "Patricia" being more prominent than the last name "Faison-Ball".

Patricia Faison-Ball  
Senior Petitions Attorney  
Office of Petitions